IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4671 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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STATE OF GUAJRAT - Petitioner

Versus

ARSIBHAI VAJSINHBHAI PEETHIA - Respondent

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Appearance :
MR MIHIR JOSHI, ADDL. ADVOCATE GENERAL WITH
MR KT DAVE, A.G.P. for Petitioner.
MR PH PATHAK for Respondent.

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CORAM :	HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/02/2007
ORAL JUDGMENT

1. The petitioner, State of Gujarat, has filed this petition under Article 226 & 227 of the Constitution of India praying for quashing and setting aside the order dated 22.02.2005 passed by the learned Civil Judge (S.D.), Porbandar in Regular Execution Application No. 25 of 1998 in Regular Civil Suit No. 61 of 1990 as well as the order passed in Civil Misc. Appeal No. 46 of 2004 passed by the learned Assistant Judge, Porbandar dated 18.01.2005. The petitioner has also prayed for the declaration that the judgment and decree passed in Regular Civil Suit No. 61 of 1990 passed by the learned Civil Judge (S.D.), Porbandar and confirmed in Regular Civil Appeal No. 07 of 1996 passed by the learned Assistant Judge, Porbandar is fully complied with when the petitioner's case was considered and he was found not entitled for the promotion. By virtue of an amendment granted by this Court vide order dated 09.05.2005 passed in Civil Application No. 3937 of 2005, the petitioner has also prayed for

quashing and setting aside the orders at Annexure G-1, G-2 and G-3 as well as Annexure H dated 16.10.2004 on an application below Exh. 11 and prayed for stay against the operation, implementation and execution of all these orders.

2. The petition was admitted and rule was issued on 18.03.2005. This Court has also granted ad-interim relief in terms of para 11 (C) of the petition whereby order dated 22.02.2005 passed by the learned Civil Judge (S.D.), Porbandar in Regular Civil Execution Application No. 25 of 1998 was stayed.

3. The brief facts giving rise to the controversy involved in this petition are that the respondent, namely, Arsibhai Vajsinhbhai Peethia has filed Civil Suit No.61 of 1990 before the learned Civil Judge (S.D.), Porbandar and contended, inter alia, that he was working as Assistant Teacher in Education Department since 01.10.1977. He has passed departmental examination for promotion from Class III to Class II and has prayed that he should be

promoted to the said promotional post. The said Civil Suit was allowed and the following operative order was passed :-

"The plaintiff's suit is hereby allowed. It is hereby declared that the Act of the defendant in not granting the promotion to both the plaintiffs to the post of Education Department Class-II (Admn. Branch) is illegal, un-constitutional and void. The defendant is hereby directed to reconsider the post of both plaintiffs afresh and pass the necessary order for promotion with other service benefit which available to both the plaintiffs. The defendant has to bear his own costs of the suit and also the costs of the plaintiff."

4. Being aggrieved and feeling dissatisfied by the said order and judgment of the learned Civil Judge (S.D.) Porbandar, the State Government preferred Regular Civil Appeal No. 07 of 1996 before the District Court, Porbandar. The said appeal was heard by the Assistant Judge, Porbandar and he has dismissed the said appeal vide his judgment and order dated 30.12.1997.

5. Being further aggrieved by the said judgment and order of the learned Assistant Judge Porbandar, the State Government has preferred Second Appeal being Second Appeal (Stamp Number) No. 27 of 2000. Since the said appeal was delayed, an application for condonation of delay being Civil Application No. 7254 of 2000 was filed. The said application was heard by this Court and vide order dated 22.08.2000, it came to be rejected as no sufficient ground was made out for condonation of delay.

6. After rejection of the said application, the State Government has decided to comply with the judgment of the learned Civil Judge and considered the case of the respondent and by a detailed order, it was decided that the respondent was not entitled for the promotion because as many as 845 employees were senior to the respondent and they would be superseded if the respondent was promoted. While passing the said order, the State Government has considered the case of the respondent as per the

directions issued by this Court and as per the recruitment rules of Gujarat Education Service Class II Recruitment and Examination Rules of 1977.

7. The respondent thereafter revived his Regular Execution Application and moved to the learned Civil Judge (S.D.) for execution of the order passed by the learned Civil Judge (S.D.) in Regular Civil Suit No.61 of 1990. The learned Civil Judge (S.D.), Porbandar has passed an order below an application Exh. 11 whereby he has directed the responsible Officer to remain present before the Court. Being aggrieved by the said order, the State Government has preferred Regular Civil Misc. Appeal No. 346 of 2004 and also moved an application Exh. 5 and contended that the judgment and order in question was already complied with. The learned Assistant Judge, Porbandar has, however, rejected the said application Exh. 5 vide his order dated 18.01.2005 and held that it was merely a show-cause notice and the petitioner should show his cause before the learned Civil Judge (S.D.). The learned Civil Judge

(S.D.), Porbandar thereafter directed the Secretary, Education Department to remain present before him vide his order dated 22.02.2005 and being aggrieved by the said order, the present petition was filed by the petitioner – State of Gujarat.

8. Mr. Mihir Joshi, learned Additional Advocate General appearing with Mr. K.T. Dave, learned Assistant Government Pleader appearing for the petitioner – State of Gujarat has submitted that the learned Civil Judge (S.D.), Porbandar has utterly failed in exercising jurisdiction in the service matters, which have exclusive jurisdiction of Gujarat Civil Services Tribunal under Section 16 of the Gujarat Civil Services Tribunal Act, 1972. He has invited the Courts attention to Section 16 of the Act which deals with bar of jurisdiction of Civil Courts. He has further invited the attention of the Court to the provisions of Section 16-A of the Act which deals with manner of executive orders passed by the Tribunal. On the basis of the provisions of Section 16 as well as Section 16-A as well as Schedule

appended to the Act, Mr. Joshi has submitted that non-promotion to a higher post is subjected within domain of Civil Services Tribunal and, therefore, both the Courts below were not justified in entertaining the suit of respondent and were also not justified in rejecting the appeal preferred before the District Court, Porbandar by the petitioner. When the decree itself is a nullity, because of lack of jurisdiction, the Execution Application should not have been entertained and no coercive steps should have been taken against the petitioner or its officials for implementation of the impugned judgment and order.

9. Mr. Joshi has further submitted that even otherwise on merits, when promotion to a post is based on proved merit and efficiency and is further depending upon passing of the examination as sine qua non condition, the Courts below should have appreciated that simply by passing examination, no employee could get any indefeasible right of promotion without considering the claim of the other senior persons

and also without considering the availability of the promotions. He has further submitted that on account of the order and judgment of the learned Civil Judge, as may as 845 other eligible employees are going to be superseded and it would further lead to multiplicity of proceedings, claiming inter alia, for promotion and consequential benefits by all 845 employees, if Govt. is compelled to grant the promotion to the respondent.

10. Mr. Joshi has further submitted that even otherwise the learned Civil Judge (S.D.), Porbandar is not justified in entertaining the Execution Application and directing the petitioner to comply with the judgment by using coercive measures for complying the said judgment, namely, directing the Secretary, Education Department to remain personally present before the Court for complying with the said judgment and order. He has further submitted that the judgment was fully complied with in as much as the case of the respondent was considered by the petitioner and it was decided that the respondent

was not entitled for promotion and, therefore, question of giving consequential benefits thereof i.e. pay and allowance of promotional posts from the date of the judgment would not arise. He has, therefore, submitted that order dated 22.02.2005 is bad in law, illegal and arbitrary and, therefore, the same is required to be quashed and set aside.

11. Mr. P.H. Pathak, learned advocate appearing for the respondent has submitted that the petitioner has suppressed the material fact from this Court. The respondent had filed Caveat application before this Court on 03.02.205 on the apprehension that the petitioner may approach to this Court against the order dated 18.01.2005. The respondent has also filed second caveat application on 22.02.2005. Copies of both these caveat applications were served to the petitioner and the petitioner was aware about the request of the respondent before this Court to give an opportunity of being heard. By suppressing this fact, the petition was moved and interim order was requested. He has, therefore, submitted that for

vacating this interim relief, the respondent has moved Civil Application No. 2804 of 2005 which is ordered to be heard along with this petition.

12. He has further submitted that the petitioner had made wrong and misleading statements in paragraph 8.5 of the petition by stating that the petitioner had complied with the order passed by the learned Civil Judge (S.D.), Porbandar in Regular Civil Suit No. 61 of 1990. As a matter of fact, the said order has not been complied with and it is not brought to the notice of this Court that so far as the defence of the petitioner about the seniority position of the respondent is concerned, the said defence has no value in the eye of law as the learned Civil Judge (S.D.) has rejected the said defence after adjudication and that order has become final. He has, therefore, submitted that on this ground, promotion of the respondent could not have been withheld.

13. Mr. Pathak has further submitted that this Court, in

the identical matter of junior to the respondent, in Civil Revision Application No. 1017 of 1991 decided the issue on 27.03.1995. It was specifically observed therein that the defendant cannot be permitted to reagitate and reopen the very question which stood concluded by the judgment and decree of the Civil Court. He has invited the attention of this Court to the order passed by the learned Civil Judge in Civil Suit No. 415 of 1987 and the order of this Court passed in Civil Revision Application No. 1017 of 1991.

14. Mr. Pathak has further submitted that the petitioner has also suppressed the fact about the case of the junior to the respondent i.e. Mr. K.C. Kakkad, who is at Serial No. 1513 in the seniority list of Assistant Teacher / Assistant Education Inspector and the respondent is at Serial No. 1427. Mr. Kakkad, junior to the respondent joined service on 21.06.1978 as Assistant Teacher in the same School while the respondent had joined on 01.10.1977. The respondent as well as Mr. Kakkad both had passed

departmental examination in July, 1979. Promotions were issued in favour of those who have not passed departmental examination to the post of Gujarat Education Service Grade – II. Therefore, Mr. Kakkad had filed Civil Suit No. 415 of 1987 which was allowed in favour of Mr. Kakkad on 12.10.1989. Due to non-implementation of the decree of the said Civil Suit, Mr. Kakkad had filed Execution Application No.10 of 1990 where the learned Civil Judge has directed the authority of the State Government to remain personally present before the Court, on rejection of the defence of the petitioner i.e. Mr. Kakkad did not fall within the seniority position. On reconsideration of the case of Mr. Kakkad, promotion could not have been denied on the same ground. Against the action of the learned Civil Judge in Execution Application, the State Government has approached to this Court by way of Civil Revision Application and the said Civil Revision Application was rejected by this Court and subsequently, the petitioner has granted promotion to Mr. Kakkad from 1989.

15.Mr. Pathak has further submitted that the respondent who is senior to Mr. Kakkad, relying on the said order of Mr. Kakkad junior to the respondent, filed Civil Suit No. 61 of 1990 which was allowed in favour of the respondent on 26.02.1996. An appeal was filed by the State Government against the order in Civil Suit which was also dismissed on 30.12.1997. Against the order of appeal, the State Government filed Civil Revision Application No. 7254 of 2000 which was rejected by this Court on 22.08.2000. In the meantime, due to non-compliance of the order of the Civil Court, the respondent has filed Execution Application No. 25 of 1998. Despite specific opportunities having been given to the petitioner to comply with the directions in the suit which were on the same line of those directions issued in the case of Mr. Kakkad, the petitioner – State Government has not complied with the said directions and raised same defence by saying that the respondent did not fall within the seniority for consideration. He has further submitted that this

issue has already been concluded by the Civil Court and the said defence has no value in the eye of law. He has, therefore, submitted that the present petition has no merit and the petitioner may be directed to report compliance of the directions of the Civil Court on the same line.

16.The Court has heard the learned advocates appearing for the respective parties and considered their respective submissions and pleadings as well. The Court has also perused the orders passed by the Courts below in civil proceedings as well as execution proceedings. The Court has further taken into consideration the earlier orders passed by the Courts below as well as by this Court in other cases involving similar issue. As far as the main submission of Mr. Joshi that the decree being a nullity for want of jurisdiction with the Civil Court, the same cannot be executed against the petitioner, State of Gujarat, is concerned, it is true that Section 16 of the Gujarat Civil Services Tribunal Act, 1972 deals with bar of jurisdiction of Civil Courts. It states that no Civil

Court shall have jurisdiction to deal with or decide any question which by or under this Act is required to be or can be dealt with or decided by the Tribunal under the provisions of this Act. Section 10 deals with jurisdiction of the Tribunal. It states that the Tribunal shall have jurisdiction to hear and decide the appeals filed by the specified Civil Servants under Section 11. Section 11 states that any specified Civil Servant aggrieved by an original or appellate order or decision of any Officer or authority other than the State Government with respect to any of the matters specified in the Schedule may, within a period of 90 days from the date of such order or decision, appeal to the Tribunal against such order or decision, in a case where an appeal lies under law to the State Government. Item 4 in the Schedule refers to non-promotion to a higher post. Here in the present case, the respondent's main grievance is that he was not promoted from Class III to Class II post and he being specified civil servant, he can ventilate his grievance only before the Tribunal and not before the Civil Court. Since

the Civil Court has no jurisdiction by virtue of Section 16 of the Act, the order passed by the Civil Court cannot be executed. As against this, Mr. Pathak's main contention is that the promotion orders were passed by the Director of Education on the basis of selection made by the Education Department, Government of Gujarat, which was approved by the Gujarat Public Service Commission and hence, virtually the selection was made by the Education Department and the Director has simply passed the order of posting and, therefore, it was the promotion given by the Government and not by the Director. He has, therefore, submitted that the order passed by the Director cannot be challenged before the Service Tribunal by virtue of Section 11 of the Act. As a matter of fact, Gujarat Civil Services Tribunal has taken the decision in Appeal No. 365 of 1982 filed by one Mr. K. L. Dodiya and the Tribunal vide its order dated 29.03.1984 has dismissed the said appeal for want of jurisdiction and memo of appeal was ordered to be returned to the appellant in that case for

presentation to the proper authority. Pursuant to the said order, K.L. Dodiya has field Regular Civil Suit No. 184 of 1984 before the learned Civil Judge (S.D.), Porbandar who dismissed the said suit and being aggrieved by the said order of the learned Civil Judge (S.D.), Porbandar, the said Mr. Dodiya has preferred Regular Civil Appeal No. 41 of 1986 and while disposing of the said Regular Civil Appeal, the learned Assistant Judge, Porbandar has set aside and reversed the order and decree passed by the learned Civil Judge (S.D.), Porbandar and declared an order that the act of the defendant in that case in not granting promotion to the plaintiff to the post of Education Department Class II (Administrative Branch) was illegal, unconstitutional and void. The defendant was further directed to reconsider the case of the said plaintiff afresh in light of the observations made in the judgment and without affecting the seniority of the persons who were senior in the lower cadre to the plaintiff / appellant and the plaintiff / appellant should be promoted immediately to the last candidate who had not

passed the required qualifying examination before the plaintiff in that case in January, 1979. Considering this fact situation, this Court is of the view that since the order of promotion was passed by the Director, Education while exercising the powers delegated to him, the said order was deemed to have been passed by the State Government and hence, by virtue of Section 11 of the Act, the Gujarat Civil Services Tribunal has no jurisdiction to entertain any application or appeal and hence, bar imposed under Section 16 of the Act would not be applicable. The Civil Court has, therefore, jurisdiction to entertain, try and decide the suit filed by the respondent and it has rightly decided the said suit. The execution proceedings filed by the respondent cannot, therefore, be forestalled on the ground that the decree passed by the Civil Court was a nullity.

17. So far as second submission of Mr. Joshi is concerned, it is true that earlier, one Mr. K.C. Kakkad has filed Regular Civil Suit No. 445 of 1987 and it was decreed in favour of him. The learned

Civil Judge (S.D.), Porbandar in the said suit has declared that the act of the defendant i.e. State of Gujarat in not granting promotion to the said plaintiff to the post of Education Department Class II (Administrative Branch) was illegal, unconstitutional and void and the defendant was directed to reconsider the case of the plaintiff afresh and pass necessary order for promotion with other service benefit which was available to the said plaintiff. Against the said order and decree of the Civil Court, no appeal was preferred by the State of Gujarat and it has become final. Thereafter, the said plaintiff filed Execution Application No. 10 of 1990. In the said execution proceedings, an application was filed to prosecute the Executive Officers of the State Government for committing contempt of Court by not carrying out the directions contained in the decree passed by the Civil Court. The Executing Court has taken the view that once the finding was reached by the competent Civil Court after recording evidence, the defendant cannot be permitted to reagitate and reopen the very question which stood

concluded by the judgment and decree of the Civil Court. The said order of the Executing Court was challenged before this Court in Civil Revision Application No. 1017 of 1991 and while disposing of the said application on 27.03.1995, this Court has held that neither the Executing Court, much less this Court, in its revisional jurisdiction can upturn such decree and can record a finding against the plaintiff. The Court has rejected the said Civil Revision Application by holding that the Court has not found any jurisdictional flow in the judgment and order of the Executing Court. Based on this judgment, Mr. Pathak has strongly contended before this Court that the Executing Court has rightly rejected all the contentions raised before it which would amount to re-agitating the same issues which were already decided by the competent Civil Court. On proper appreciation of his submission, the Court found that the case of the present respondent is not exactly similar to that of Mr. K. C. Kakkad. In the present case, against the order of the learned Civil Judge (S.D.), an appeal was preferred. On dismissal of the

appeal, Second Appeal was preferred before this Court. However, it was filed late. The Court has not condoned the delay and no finding is given on the merits of the Second Appeal. It is, however, true that the order passed by the learned Civil Judge has become final. But one more fact which has come on record of this proceeding is that immediately after dismissal of the Second Appeal, the petitioner – State of Gujarat has given effect to the order of the learned Civil Judge and passed a detailed order. This step which is taken here in the present proceedings was lacking in the case of Mr. K.C. Kakkad. The Selection Committee consisting of 4 senior officers of the State of Gujarat has considered the case of the respondent and in view of the letter dated 13.12.2000 written by the Education Department wherein it is stated that as per the order and decree of the Civil Court, the proposal for promotion of the respondent from Class III to Class II was sent to the Finance Department after approval of the Gujarat Public Service Commission and the Finance Department has expressed its opinion that

the Civil Court has directed the State Government to reconsider the case of the respondent and to give him all consequential benefits available to him. On reconsideration, it was found by the Committee that the respondent has passed the departmental examination in July 1979 and no promotion was given from Class III to Class II to any person after serial No. 582 in the seniority list and since the respondent was junior in the seniority list, he was not entitled to any promotion. Thus, as per the direction of the Civil Court, the Selection Committee has taken the decision. If the respondent is aggrieved by or dissatisfied with the said decision, it is open for him to challenge the said decision in the higher forum. He cannot file the execution proceedings on the ground that the directions issued by the learned Civil Judge (S.D.), Porbandar have not been complied with.

18. As a matter of fact, similar issue arose before this Court. One Mr. V. M. Desai has filed Special Civil Application No. 8372 of 1990 seeking direction to

the State of Gujarat for consideration of his case for promotion to the post of Gujarat Education Service Class II and for further direction to consider his case from the date on which his junior Mr. K. L. Dodiya was promoted on the basis of his seniority with arrears of pay and other consequential benefits. This Court vide its order dated 07.09.1998 has disposed of the said petition with a liberty to the said petitioner to file fresh representation before the appropriate authority within a period of two weeks from the date of the said order and it was observed therein that in case such a representation was made by the petitioner within a stipulated time, the respondent shall consider and decide the same on merits and in accordance with law within a period of four months from the date of receipt thereof. Pursuant to the said order, the said Mr. Desai has made the representation. However, the said representation was not decided and hence, the said Mr. Desai has filed another petition being Special Civil Application No. 12031 of 2001 and while disposing of the said petition by this Court vide order

dated 11.07.2003, the Secretary, Education Department of the State of Gujarat was directed to fix personal hearing of that petitioner within a period of one month and to communicate the date, time and venue to that petitioner and after giving reasonable opportunity to the said petitioner, to pass appropriate order in respect of the grievance of the said petitioner for deemed date of promotion on the date on which juniors were promoted in Class II while keeping in mind letter dated 09.12.1998 written by the Joint Director of Education Department, State of Gujarat and to pass appropriate orders after considering the fact whether the juniors were promoted in pursuance to the order passed by any Court or not and if any order has been passed by the Court, then indicate the reason why petitioner was not entitled to the same benefit of deemed date of promotion in Class II when juniors were promoted by the respondent – State of Gujarat and to pass speaking order within two months from the date of personal hearing given to the said petitioner.

19.Pursuant to the said order of this Court, the Joint Secretary, Education Department vide his order dated 21.04.2004 has taken the decision that the representation made by said Mr. Desai cannot be accepted as it is contrary to the Rules and Regulations. It was further observed therein that if the deemed date promotion is given to the said Mr. Desai, the State of Gujarat was required to give such deemed date promotion to the persons at Serial Nos. 353 to 1500 and an anomalous situation would arise and hence, such demand cannot be accepted. It is also pertinent to note that the said Mr. Desai has thereafter filed Contempt Petition before this Court being Misc. Civil Application No. 510 of 2004 and while disposing of the said contempt petition on 03.05.2005, this Court has observed that in view of the Education Department's letter dated 21.04.2004, the grievance made by said Mr. Desai did not survive and, therefore, the application has become infructuous. This order of the Division Bench of this Court is equally applicable in the fact situation of the

present case. Here also, the Selection Committee has taken the decision. Whether that decision is right or not is not the question. However, it cannot be said that the petitioner – State of Gujarat has not taken any decision pursuant to the order passed by the learned Civil Judge (S.D.), Porbandar.

20. There is one more reason to show some indulgence in the present petition. It is true that it was absolutely essential for a candidate to get promotion from Education Department Class III to the post of Class II who pass the departmental examination and the promotions are to be given accordingly. But in view of the directions issued by this Court in Special Civil Application No. 212 of 1980, after January 1980 as the departmental examinations were not conducted, the promotions were granted as per seniority basis and accordingly, the respondent's seniority number has not been reached and he was not given promotion. It is also not correct to state that the seniority was to be counted only from the date of passing of the departmental examinations in

Class II post in as much as since 1980 January, examinations were closed and in those circumstances, those teachers who were not in a position to pass the departmental examination with prescribed period and time limit, their seniority could not be ignored and the respondent could not be placed above these teachers. The meeting of the Selection Committee was held from time to time on and from 29.11.1980. A detailed chart is submitted before this Court which is as under :-

Date of holding meeting of Selection Committee.	Number in Seniority List.	Remarks
29.11.1980	675 – 745	As per Seniority List of 15.11.1972.
03.05.1983	746 – 800	----- do -----
07.03.1984	801 - 1000	----- do -----
18.11.1986	01 - 048	Seniority list of 02.05.1984.
20.01.1988	50 - 210	----- do -----
18.12.1992 20/22.02.1992	211 - 461	----- do -----
15.04.1996	462 – 582	----- do -----
25.02.2003	583 – 1100	----- do -----
08.04.2004	1101 – 1137	----- do -----
18.10.2005	1138 – 1303	Under consideration.

21. From the above chart, it becomes clear that promotions were given to all those candidates whose numbers in the seniority list are upto 1137 and promotions of the candidates from serial Nos. 1138 to 1303 are under consideration. The respondent is at serial No. 1427. On the date when the respondent's case was considered by the Selection Committee, promotions were given to the candidates upto Serial No. 582 in the selection list. Thereafter, promotions are given to the candidates upto serial No. 1137 in the seniority list and from 1138 to 1303, it is under consideration. If the respondent is given promotion on the basis of the decree passed by the learned Civil Judge (S.D.), Porbandar, he would be placed above all other candidates from Serial No. 583 to 1303. This would result into an absurd and anomalous situation and the Court would not permit to give such deemed date of promotion by ignoring the rights of other large number of candidates and that too on the basis of one or two single isolated cases which were the outcome of some lacuna or not taking timely action by the State Government.

22.Considering the entire facts and circumstances of the case and further considering the various proceedings and outcome thereof, the Court is of the view that the petitioner – State of Gujarat has made out a case for granting the relief prayed for in the petition and accordingly, this Court is of the view that the judgment and decree passed in Regular Civil Suit No. 61 of 1990 by the learned Civil Judge (S.D.), Porbandar and confirmed in Regular Civil Appeal No. 07 of 1996 passed by the learned Assistant Judge, Porbandar was fully complied with when the petitioner's case was considered and he was found not entitled for promotion. The directions given by the leanred Civil Judge (S.D.), Porbandar were only to reconsider the case of the respondent afresh and pass the necessary order for promotion with other service benefit which is available to him. The respondent's case was reconsidered afresh and on reconsideration, he was not found eligible for promotion and hence, no further service benefit was available to him. As a consequence of this finding,

the orders passed by the learned Civil Judge (S.D.), Porbandar on 22.02.2005 in Regular Execution Application No. 25 of 1998 in Regular Civil Suit No. 61 of 1990 and the order passed in Civil Misc. Appeal No. 46 of 2004 passed by the learned Assistant Judge, Porbandar dated 18.01.2005 and all other consequential orders at Annexure G-1, G-2, G-3 and Annexure H dated 16.10.2004 on an application below Exh. 11 are hereby quashed and set aside.

23.The petition is accordingly allowed. Rule is made absolute without any order as to costs.

[K. A. PUJ, J.]

Savariya